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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF ALAMEDA**

19 **ENVIRONMENTAL RESEARCH**
20 **CENTER, INC., a California non-profit**
21 **corporation**

22 **Plaintiff,**

23 **vs.**

24 **BRICK & MORTAR DISTRIBUTING,**
25 **LLC; 5 STAR NUTRITION, LLC; and**
26 **DOES 1-100**

27 **Defendants.**

CASE NO. RG18928347

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 13, 2018
Trial Date: None set

28 **1. INTRODUCTION**

29 **1.1** On November 13, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"), a
30 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
31 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
32 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Brick & Mortar Distributing, LLC and 5 Star Nutrition, LLC
2 (collectively “Brick & Mortar”) and Does 1-100. Based on ERC’s Notices of Violation
3 (“Notices”) dated August 6, 2018 and October 9, 2018, ERC alleges that a number of products
4 manufactured, distributed, or sold by Brick & Mortar contain lead and/or cadmium, chemicals
5 listed under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to
6 these chemicals at a level requiring a Proposition 65 warning. These products (referred to
7 hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are: (1)
8 BN Bioprime Nutrition Procore Natural Vanilla (lead), (2) BN Bioprime Nutrition Procore
9 Natural Chocolate (lead), (3) NutraOne MassOne Chocolate Chip (lead), (4) NutraOne
10 ProteinOne Mint Choc Chip (lead, cadmium), (5) NutraOne MassOne Choc PB Cup (lead,
11 cadmium), (6) NutraOne ProteinOne Chocolate Chip (lead), (7) BN Bioprime Nutrition
12 Procore Blend Raspberry Gelato (lead), (8) NutraOne MassOne S’mores (lead), (9) NutraOne
13 Ideal Greens Nutrient-Rich Greens & Antioxidant Superfood Natural Berry (lead), (10) BN
14 Bioprime Nutrition Procore Blend Chocolate (lead, cadmium), (11) BN Bioprime Nutrition
15 Procore Blend Choc Peanut Butter (lead), (12) NutraOne ProteinOne Caramel Cookie Crunch
16 (lead), (13) NutraOne ProteinOne Vanilla (lead), (14) P3aking Power, Performance & Pumps
17 Flavor: Who Gives A Pump? Naturally Flavored & Stevia Sweetened (lead), (15) NutraOne
18 TestOne Testosterone Booster (lead), (16) NutraOne ProteinOne Cookies & Cream (lead), (17)
19 BN Bioprime Nutrition Procore Blend Premium Grass-Fed Blended Protein Birthday Cake
20 (lead), (18) NutraOne ProteinOne Banana (lead), (19) NutraOne ProteinOne Cinnamon Roll
21 (lead), (20) NutraOne CaseinOne Vanilla (lead), (21) NutraOne CaseinOne Chocolate (lead),
22 (22) NutraOne DetoxOne (lead), (23) NutraOne GrowthOne (lead), (24) NutraOne Shred One
23 Shred Matrix – (lead), (25) Anabolic Warfare Hardcore Pre Workout Stim Lord Strawberry
24 Lime (lead), (26) Anabolic Warfare Hardcore Pre Workout Stim Lord Rocket Pop (lead), (27)
25 Anabolic Warfare Liver Guardian (lead), (28) Anabolic Warfare Nuclear Armageddon
26 Ballisticberry Lemonade (lead), and (29) Anabolic Warfare Hardcore Pre Workout Stim Lord
27 Limited Edition Hot Tamales (lead).

28 1.2 ERC and Brick & Mortar are hereinafter referred to individually as a “Party” or

1 collectively as the "Parties."

2 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
3 causes, helping safeguard the public from health hazards by reducing the use and misuse of
4 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
5 and encouraging corporate responsibility.

6 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
7 business entity each of which has employed ten or more persons at all times relevant to this action,
8 and qualifies as a "person in the course of doing business" within the meaning of Proposition 65.
9 Brick & Mortar manufactures, distributes, and/or sells the Covered Products.

10 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation
11 dated August 6, 2018 that was served on the California Attorney General, other public
12 enforcers, and Brick & Mortar ("Notices"). More than 60 days have passed since the Notice of
13 Violation was served on the Attorney General, public enforcers and Brick & Mortar and no
14 designated governmental entity has filed a complaint against Brick & Mortar with regard to the
15 Covered Products set forth in the Notice of Violation or the alleged violations. A true and
16 correct copy of the Notice is attached hereto as **Exhibit A** and incorporated herein by reference.

17 **1.6** On October 9, 2018, ERC served a Notice of Violation on the California Attorney
18 General, other public enforcers, and Brick & Mortar. A true and correct copy of the Notice is
19 attached hereto as Exhibit B and incorporated by reference. The parties stipulate that the
20 Complaint be deemed amended as of December 19, 2018 to include the products set forth in
21 ERC's October 9, 2018 Notice of Violation. This Consent Judgment shall apply to all Covered
22 Products set forth in Paragraph 1.1, effective 60 days after October 9, 2018, provided no public
23 enforcer is diligently pursuing the allegations set forth in ERC's October 9, 2018 Notice of
24 Violation. On December 19, 2018 more than 60 days will have passed since ERC's October 9,
25 2018 Notice of Violation was served on the Attorney General, public enforcers, and Brick &
26 Mortar.

27 **1.7** ERC's Notices, Complaint and the Amended Complaint incorporating ERC's
28 Notice of Violation dated October 9, 2018 allege that use of the Covered Products expose

1 persons in California to lead and/or cadmium without first providing clear and reasonable
2 warnings in violation of California Health and Safety Code section 25249.6. Brick & Mortar
3 denies all material allegations contained in the Notices, the Complaint and the Amended
4 Complaint.

5 **1.8** The Parties have entered into this Consent Judgment in order to settle, compromise,
6 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
7 Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed
8 as an admission by any of the Parties or by any of their respective officers, directors,
9 shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
10 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
11 violation of law.

12 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
14 current or future legal proceeding unrelated to these proceedings.

15 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as a
16 Judgment by this Court.

17 **2. JURISDICTION AND VENUE**

18 For purposes of this Consent Judgment and any further court action that may become
19 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
20 jurisdiction over the allegations of violations contained in the Notices, Complaint and the
21 Amended Complaint, personal jurisdiction over Brick & Mortar as to the acts alleged in the
22 Notices, Complaint and the Amended Complaint, that venue is proper in Alameda County, and
23 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
24 claims up through and including the Effective Date which were or could have been asserted in this
25 action based on the facts alleged in the Notices, Complaint and the Amended Complaint.

26 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

27 **3.1** Beginning on the Effective Date, Brick & Mortar shall be permanently enjoined
28 from manufacturing for sale in the State of California, "Distributing into the State of

California,” or directly selling in the State of California, any Covered Products which expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it meets the warning requirements under Section 3.2.

3.1.1 As used in this Consent Judgment, the term “Distributing into the State of California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Brick & Mortar knows or has reason to know will sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.1.3 For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

If Brick & Mortar is required to provide a warning pursuant to Section 3.1, the following warning must be utilized (“Warning”):

WARNING: Consuming this product can expose you to chemicals including [lead] [and] [cadmium] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

1 Brick & Mortar shall use the phrase "cancer and" in the Warning if Brick & Mortar has
2 reason to believe that the the "Daily Lead Exposure Level" is greater than 15 micrograms of lead
3 as determined pursuant to the quality control methodology set forth in Section 3.4 or if Brick &
4 Mortar has reason to believe that another Proposition 65 chemical is present which may require a
5 cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there
6 is lead, cadmium, or both chemicals present in each of the Covered Products.

7 The Warning shall be securely affixed to or printed upon the container or label of each
8 Covered Product. If the Warning is provided on the label, it must be set off from other
9 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
10 the internet, the Warning shall appear on the checkout page when a California delivery address is
11 indicated for any purchase of any Covered Product. An asterisk or other identifying method
12 must be utilized to identify which products on the checkout page are subject to the Warning. In
13 no event shall any internet or website Warning be contained in or made through a link.

14 The Warning shall be at least the same size as the largest of any other health or safety
15 warnings also appearing on its website or on the label or container of Brick & Mortar's product
16 packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No
17 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
18 average lay person shall accompany the Warning. Further no statements may accompany the
19 Warning that state or imply that the source of the listed chemical has an impact on or results in a
20 less harmful effect of the listed chemical.

21 Brick & Mortar must display the above Warning with such conspicuousness, as compared
22 with other words, statements or designs on the label or container, or on its website, if applicable, to
23 render the Warning likely to be read and understood by an ordinary individual under customary
24 conditions of purchase or use of the product.

25 3.3 Reformulated Covered Products

26 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
27 Exposure Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium
28 Exposure Level" is no more than 4.1 micrograms of cadmium per day as determined by the quality

1 control methodology described in Section 3.4.

2 **3.4 Testing and Quality Control Methodology**

3 **3.4.1** Beginning within one year of the Effective Date, Brick & Mortar shall
4 arrange for lead and cadmium testing of the Covered Products at least once a year for a
5 minimum of five consecutive years by arranging for testing of five randomly selected samples
6 of each of the Covered Products, in the form intended for sale to the end-user, which Brick &
7 Mortar intends to sell or is manufacturing for sale in California, directly selling to a consumer
8 in California or "Distributing into the State of California." If tests conducted pursuant to this
9 Section demonstrate that no Warning is required for a Covered Product during each of five
10 consecutive years, then the testing requirements of this Section will no longer be required as to
11 that Covered Product. However, if during or after the five-year testing period, Brick & Mortar
12 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
13 Covered Products, Brick & Mortar shall test that Covered Product annually for at least four (4)
14 consecutive years after such change is made.

15 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
16 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the five
17 (5) randomly selected samples of the Covered Products will be controlling.

18 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
19 laboratory method that complies with the performance and quality control factors appropriate
20 for the method used, including limit of detection, qualification, accuracy, and precision that
21 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
22 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

23 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
24 independent third party laboratory certified by the California Environmental Laboratory
25 Accreditation Program or an independent third-party laboratory that is registered with the
26 United States Food & Drug Administration.

27 **3.4.5** Nothing in this Consent Judgment shall limit Brick & Mortar's ability to
28 conduct, or require that others conduct, additional testing of the Covered Products, including

1 the raw materials used in their manufacture.

2 **3.4.6** Within thirty (30) days of ERC's written request, Brick & Mortar shall
3 deliver lab reports obtained pursuant to Section 3.4 to ERC. Brick & Mortar shall retain all test
4 results and documentation for a period of five years from the date of each test.

5 **4. SETTLEMENT PAYMENT**

6 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
7 attorney's fees, and costs, Brick & Mortar shall make a total payment of \$100,000.00 ("Total
8 Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). Brick &
9 Mortar shall make this payment by wire transfer to ERC's account, for which ERC will give
10 Brick & Mortar the necessary account information. The Total Settlement Amount shall be
11 apportioned as follows:

12 **4.2** \$26,129.42 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$19,597.06) of the civil penalty to
14 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$6,532.36) of the civil penalty.

17 **4.3** \$12,466.03 shall be distributed to ERC as reimbursement to ERC for reasonable
18 costs incurred in bringing this action.

19 **4.4** \$19,597.05 shall be distributed to ERC as an Additional Settlement Payment
20 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
21 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
22 caused by Defendant in this matter. These activities are detailed below and support ERC's
23 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
24 supplement products in California. ERC's activities have had, and will continue to have, a direct
25 and primary effect within the State of California because California consumers will be benefitted
26 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
27 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
28 the products.

1 Based on a review of past years' actual budgets, ERC is providing the following list of
2 activities ERC engages in to protect California consumers through Proposition 65 citizen
3 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
4 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
5 supplement products that may contain lead and/or cadmium and are sold to California
6 consumers. This work includes continued monitoring and enforcement of past consent judgments
7 and settlements to ensure companies are in compliance with their obligations thereunder, with a
8 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
9 also includes investigation of new companies that ERC does not obtain any recovery through
10 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
11 ERC's Voluntary Compliance Program by acquiring products from companies, developing and
12 maintaining a case file, testing products from these companies, providing the test results and
13 supporting documentation to the companies, and offering guidance in warning or implementing a
14 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT
15 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
16 numbers of contaminated products that reach California consumers by providing access to free
17 testing for lead in dietary supplement products (Products submitted to the program are screened
18 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
19 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
20 that submitted the product).

21 ERC shall be fully accountable in that it will maintain adequate records to document and
22 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
23 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
24 shall provide the Attorney General, within thirty days of any request, copies of documentation
25 demonstrating how such funds have been spent.

26 4.5 \$11,160.00 shall be distributed to Michael Freund as reimbursement of ERC's
27 attorney's fees, \$1,267.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's
28 attorney's fees, while \$29,380.00 shall be distributed to ERC for its in-house legal fees. Except

1 as explicitly provided herein, each Party shall bear its own fees and costs.

2 **4.6** In the event that Brick & Mortar fails to remit the Total Settlement Amount
3 owed under Section 4 of this Consent Judgment on or before the Due Date, Brick & Mortar
4 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
5 shall provide written notice of the delinquency to Brick & Mortar via electronic mail. If Brick
6 & Mortar fails to deliver the Total Settlement Amount within five (5) days from the written
7 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
8 provided in the California Code of Civil Procedure section 685.010. Additionally, Brick &
9 Mortar agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the
10 payment due under this Consent Judgment.

11 **5. MODIFICATION OF CONSENT JUDGMENT**

12 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written
13 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by
14 motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a modified
15 consent judgment.

16 **5.2** If Brick & Mortar seeks to modify this Consent Judgment under Section 5.1, then
17 Brick & Mortar must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
18 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
19 must provide written notice to Brick & Mortar within thirty (30) days of receiving the Notice of
20 Intent. If ERC notifies Brick & Mortar in a timely manner of ERC's intent to meet and confer,
21 then the Parties shall meet and confer in good faith as required in this Section. The Parties
22 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
23 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
24 modification, ERC shall provide to Brick & Mortar a written basis for its position. The Parties
25 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
26 remaining disputes. Should it become necessary, the Parties may agree in writing to different
27 deadlines for the meet-and-confer period.
28

1 **5.3** In the event that Brick & Mortar initiates or otherwise requests a modification
2 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
3 modification of the Consent Judgment, Brick & Mortar shall reimburse ERC its costs and
4 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
5 arguing the motion or application.

6 **5.4** Where the meet-and-confer process does not lead to a joint motion or application
7 in support of a modification of the Consent Judgment, then either Party may seek judicial relief
8 on its own. In any such contested court proceeding, ERC may seek costs and any attorney's
9 fees incurred in opposing the motion pursuant to California Code of Civil Procedure section
10 1021.5.

11 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
12 **JUDGMENT**

13 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
14 this Consent Judgment.

15 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
16 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
17 inform Brick & Mortar in a reasonably prompt manner of its test results, including information
18 sufficient to permit Brick & Mortar to identify the Covered Products at issue. Brick & Mortar
19 shall, within thirty (30) days following such notice, provide ERC with testing information, from
20 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
21 demonstrating Brick & Mortar's compliance with the Consent Judgment. The Parties shall first
22 attempt to resolve the matter prior to ERC taking any further legal action.

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
26 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
27 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
28 application to any Covered Product which is distributed or sold exclusively outside the State of

1 California and which is not used by California consumers.

2 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

3 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
4 behalf of itself and in the public interest, and Brick & Mortar and its respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
6 franchisees, licensees, customers (not including private label customers of Brick & Mortar),
7 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
8 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
9 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
10 hereby fully releases and discharges the Released Parties from any and all claims, actions,
11 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
12 asserted, or that could have been asserted from the handling, use, or consumption of the
13 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
14 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
15 lead and/or cadmium up to and including the Effective Date.

16 **8.2** ERC on its own behalf only, and Brick & Mortar on its own behalf only, further
17 waive and release any and all claims they may have against each other for all actions or
18 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
19 65 in connection with the Notices, Complaint and Amended Complaint up through and
20 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
21 any Party's right to seek to enforce the terms of this Consent Judgment.

22 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
23 alleged in the Notices, Complaint and Amended Complaint, and relating to the Covered
24 Products, will develop or be discovered. ERC on behalf of itself only, and Brick & Mortar on
25 behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover
26 and include all such claims up through and including the Effective Date, including all rights of
27 action therefore. ERC and Brick & Mortar acknowledge that the claims released in Sections 8.1
28 and 8.2 above may include unknown claims, and nevertheless waive California Civil Code

1 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as
2 follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
5 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
6 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
7 OR HER SETTLEMENT WITH THE DEBTOR.

8 ERC on behalf of itself only, and Brick & Mortar on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 section 1542.

11 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to constitute
12 compliance with Proposition 65 by any releasee regarding alleged exposures to lead and/or
13 cadmium in the Covered Products as set forth in the Notices, Complaint and Amended
14 Complaint.

15 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
16 environmental exposures arising under Proposition 65, nor shall it apply to any of Brick &
17 Mortar's products other than the Covered Products.

18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

19 In the event that any of the provisions of this Consent Judgment are held by a court to be
20 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

21 **10. GOVERNING LAW**

22 The terms and conditions of this Consent Judgment shall be governed by and construed in
23 accordance with the laws of the State of California.

24 **11. PROVISION OF NOTICE**

25 All notices required to be given to either Party to this Consent Judgment by the other shall
26 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
27 email may also be sent.

28 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

1 Ph: (619) 500-3090
2 Email: chris_erc501c3@yahoo.com

3 With a copy to:
4 Michael Freund
5 Ryan Hoffman
6 Michael Freund & Associates
7 1919 Addison Street, Suite 105
8 Berkeley, CA 94704
9 Ph: (510) 540-1992
10 Fax: (510) 540-5543

11 **BRICK & MORTAR DISTRIBUTING, LLC; 5 STAR NUTRITION, LLC**

12 Brian Marver
13 Chief Executive Officer
14 5 Star Nutrition
15 8500 Shoal Creek Bldg 4, Suite 150
16 Austin, TX 78757
17 (512) 821-1410

18 With a copy to:
19 Ashley D. Posner
20 Posner Law Corporation
21 15303 Ventura Blvd., Suite 900
22 Sherman Oaks, CA 91403
23 Ph: (310) 475-8520
24 Fax: (818) 986-2203

25 **12. COURT APPROVAL**

26 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
27 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
28 Consent Judgment.

1 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
3 prior to the hearing on the motion.

4 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be void
5 and have no force or effect.

6 **13. EXECUTION AND COUNTERPARTS**

7 This Consent Judgment may be executed in counterparts, which taken together shall be
8 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid

1 as the original signature.

2 **14. DRAFTING**

3 The terms of this Consent Judgment have been reviewed by the respective counsel for each
4 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
5 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
6 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
7 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
8 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
9 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
10 equally in the preparation and drafting of this Consent Judgment.

11 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

12 If a dispute arises with respect to either Party's compliance with the terms of this Consent
13 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
14 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
15 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

16 **16. ENFORCEMENT**

17 ERC may, by motion or order to show cause before the Superior Court of Alameda
18 County, enforce the terms and conditions contained in this Consent Judgment. In any action
19 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
20 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
21 To the extent the failure to comply with the Consent Judgment constitutes a violation of
22 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
23 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
24 law for failure to comply with Proposition 65 or other laws.

25 **17. ENTIRE AGREEMENT, AUTHORIZATION**

26 **17.1** This Consent Judgment contains the sole and entire agreement and understanding
27 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
28 negotiations, commitments, and understandings related hereto. No representations, oral or

1 otherwise, express or implied, other than those contained herein have been made by any Party.
2 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed
3 to exist or to bind any Party.

4 17.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
5 by the Party he or she represents to stipulate to this Consent Judgment.

6 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
7 **CONSENT JUDGMENT**

8 This Consent Judgment has come before the Court upon the request of the Parties. The
9 Parties request the Court to fully review this Consent Judgment and, being fully informed
10 regarding the matters which are the subject of this action, to:

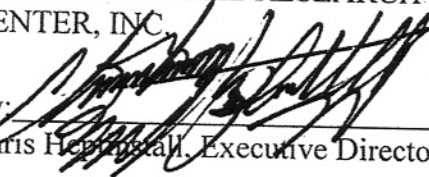
11 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
12 equitable settlement of all matters raised by the allegations of the Complaint and Amended
13 Complaint, that the matter has been diligently prosecuted, and that the public interest is served by
14 such settlement; and

15 (2) Make the findings pursuant to California Health and Safety Code section
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

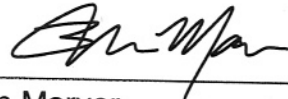
18 Dated: 11/28/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

19 By: 
20 Chris Heppinstall, Executive Director

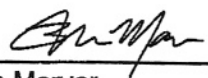
21 Dated: December 13, 2018

BRICK & MORTAR DISTRIBUTING, LLC

22 By: 
23 Brian Marver
24 Its Chief Executive Officer

1 Dated: December 13, 2018

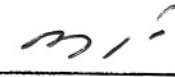
5 STAR NUTRITION, LLC

2
3 
4 By: Brian Marver
Its: President & Chief Executive Officer

5 **APPROVED AS TO FORM:**

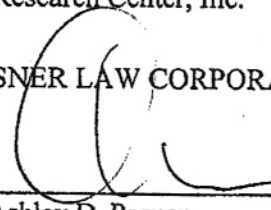
6 Dated: 12/20/, 2018

MICHAEL FREUND & ASSOCIATES

7 By: 
8 Michael Freund
9 Ryan Hoffman
10 Attorneys for Plaintiff Environmental
Research Center, Inc.

11 Dated: 12-13-, 2018

POSNER LAW CORPORATION

12
13 By: 
14 Ashley D. Posner
15 Attorney for Defendants Brick & Mortar
16 Distributing, LLC and 5 Star Nutrition,
LLC

17 **ORDER AND JUDGMENT**

18 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
19 approved and Judgment is hereby entered according to its terms.

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21
22 Dated: _____, 2018

23 _____
Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

August 6, 2018

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Brick & Mortar Distributing, LLC
5 Star Nutrition, LLC**

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. BN Bioprime Nutrition Procore Natural Vanilla - Lead
2. BN Bioprime Nutrition Procore Natural Chocolate - Lead
3. NutraOne MassOne Chocolate Chip - Lead
4. NutraOne ProteinOne Mint Choc Chip - Lead, Cadmium
5. NutraOne MassOne Choc PB Cup - Lead, Cadmium
6. NutraOne ProteinOne Chocolate Chip - Lead
7. BN Bioprime Nutrition Procore Blend Raspberry Gelato - Lead
8. NutraOne MassOne S'mores - Lead
9. NutraOne Ideal Greens Nutrient-Rich Greens & Antioxidant Superfood Natural Berry - Lead

10. BN Bioprime Nutrition Procore Blend Chocolate – Lead, Cadmium
11. BN Bioprime Nutrition Procore Blend Choc Peanut Butter - Lead
12. NutraOne ProteinOne Caramel Cookie Crunch - Lead
13. NutraOne ProteinOne Vanilla - Lead
14. P3aking Power, Performance & Pumps Flavor: Who Gives A Pump? Naturally Flavored & Stevia Sweetened - Lead
15. NutraOne TestOne Testosterone Booster - Lead
16. NutraOne ProteinOne Cookies & Cream - Lead
17. BN Bioprime Nutrition Procore Blend Premium Grass-Fed Blended Protein Birthday Cake - Lead
18. NutraOne ProteinOne Banana - Lead
19. NutraOne ProteinOne Cinnamon Roll - Lead
20. NutraOne CaseinOne Vanilla - Lead
21. NutraOne CaseinOne Chocolate - Lead
22. NutraOne DetoxOne - Lead
23. NutraOne GrowthOne - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 6, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years.

Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Brick & Mortar Distributing, LLC; 5 Star Nutrition, LLC; and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Brick & Mortar Distributing, LLC and 5 Star Nutrition, LLC

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: August 6, 2018

Michael Freund

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On August 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Brick & Mortar Distributing, LLC
8500 Shoal Creek Blvd.
Bldg 4, Suite 150
Austin, TX 78757

Current President or CEO
5 Star Nutrition, LLC
1520 Luna Road, Ste 120
Carrollton, TX 75006

Current President or CEO
5 Star Nutrition, LLC
8500 Shoal Creek Blvd.
Bldg 4, Suite 150
Austin, TX 78757

Marver Holdings, LLC
(Registered Agent for Brick & Mortar
Distributing, LLC)
4213 Dickason Ave., #25
Dallas, TX 75219

Current President or CEO
Brick & Mortar Distributing, LLC
10900 Stonelake Blvd., Ste B-102
Austin, TX 78759

The Corporation Trust Company
(Registered Agent for 5 Star Nutrition, LLC)
Corporation Trust Center
1209 N. Orange Street
Wilmington, DE 19801

Current President or CEO
5 Star Nutrition, LLC
10900 Stonelake Blvd., Ste B-102
Austin, TX 78759

CT Corporation System
(Registered Agent for 5 Star Nutrition, LLC)
2 North Jackson Street, Ste 605
Montgomery, AL 36104

Current President or CEO
Brick & Mortar Distributing, LLC
6541 Stichter Avenue
Dallas, TX 75230

CT Corporation System
(Registered Agent for 5 Star Nutrition, LLC)
1999 Bryan Street, Ste 900
Dallas, TX 75201

On August 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On August 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
August 6, 2018
Page 7

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

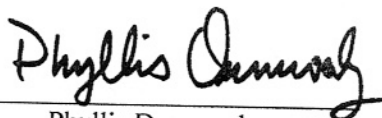
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On August 6, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on August 6, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Calaveras
County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa
County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado
County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno
County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
P.O. Drawer D
Independence, CA 93526

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa
County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada
County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange
County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
303 West Third Street
San Bernadino, CA 92415

District Attorney, San Diego
County
330 West Broadway, Suite
1300
San Diego, CA 92101

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT B

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

October 9, 2018

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Brick & Mortar Distributing, LLC
5 Star Nutrition, LLC**

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. NutraOne Shred One Shred Matrix - Lead
2. Anabolic Warfare Hardcore Pre Workout Stim Lord Strawberry Lime - Lead
3. Anabolic Warfare Hardcore Pre Workout Stim Lord Rocket Pop - Lead
4. Anabolic Warfare Liver Guardian - Lead
5. Anabolic Warfare Nuclear Armageddon Ballisticberry Lemonade - Lead
6. Anabolic Warfare Hardcore Pre Workout Stim Lord Limited Edition Hot Tamales - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

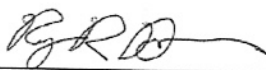
Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 9, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at rrhoffma@gmail.com.**

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Brick & Mortar Distributing, LLC; 5 Star Nutrition, LLC; and their Registered Agents for Service of Process only)
Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Brick & Mortar Distributing, LLC and 5 Star Nutrition, LLC

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.


2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 9, 2018



Ryan Hoffman

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On October 9, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Brick & Mortar Distributing, LLC
8500 Shoal Creek Blvd.
Bldg 4, Suite 150
Austin, TX 78757

Current President or CEO
5 Star Nutrition, LLC
1520 Luna Road, Ste 120
Carrollton, TX 75006

Current President or CEO
5 Star Nutrition, LLC
8500 Shoal Creek Blvd.
Bldg 4, Suite 150
Austin, TX 78757

Current President or CEO
5 Star Nutrition, LLC
6541 Stichter Avenue
Dallas, TX 75230

Current President or CEO
Brick & Mortar Distributing, LLC
10900 Stonelake Blvd., Ste B-102
Austin, TX 78759

Marver Holdings, LLC
(Registered Agent for Brick & Mortar
Distributing, LLC)
4213 Dickason Ave., #25
Dallas, TX 75219

Current President or CEO
5 Star Nutrition, LLC
10900 Stonelake Blvd., Ste B-102
Austin, TX 78759

The Corporation Trust Company
(Registered Agent for 5 Star Nutrition, LLC)
Corporation Trust Center
1209 N. Orange Street
Wilmington, DE 19801

Current President or CEO
Brick & Mortar Distributing, LLC
6541 Stichter Avenue
Dallas, TX 75230

CT Corporation System
(Registered Agent for 5 Star Nutrition, LLC)
2 North Jackson Street, Ste 605
Montgomery, AL 36104

CT Corporation System
(Registered Agent for 5 Star Nutrition, LLC)
1999 Bryan Street, Ste 900
Dallas, TX 75201

On October 9, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On October 9, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Michelle Latimer, Program Coordinator
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220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Tori Verber Salazar, District Attorney
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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Allison Haley, District Attorney
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1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

Eric J. Dobroth, Deputy District Attorney
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County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

October 9, 2018

Page 6

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

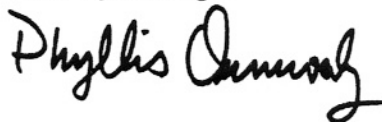
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On October 9, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 9, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Service List

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive, Suite
245
Oroville, CA 95965

District Attorney, Calaveras
County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa
County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado
County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno
County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
P.O. Drawer D
Independence, CA 93526

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles
County
Hall of Justice
211 West Temple St., Ste 1200
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa
County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino
County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada
County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange
County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
303 West Third Street
San Bernardino, CA 92415

District Attorney, San Diego
County
330 West Broadway, Suite
1300
San Diego, CA 92101

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
100 Courthouse Square, 2nd
Floor
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
463 2nd Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at
P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.